Supreme Court, U.S.
FILED

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IN THE
Supreme Court of the United States
OCTOBER TERM, 1993

ELLIS L. McDONALD,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

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PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Under the Racketeer Influenced and Corrupt Organizations (RICO) statute, do separate patterns of racketeering activity involving the same enterprise constitute separate violations of 18 U.S.C. Section 1962(c), and therefore separate offenses?

2. Where a violation of 18 U.S.C. Section 1962(c) is charged, does Rule 8(b) of the Federal Rules of Criminal Procedure permit the joinder of separate patterns of racketeering activity, involving the same enterprise and different defendants, in one count of an indictment?

3. Where a violation of 18 U.S.C. 1962(c) is charged, and the enterprise is a legitimate business, does a pattern of racketeering activity exist when the acts of racketeering activity are related to the enterprise, but the acts are not related to each other?

LIST OF PARTIES

The parties to the proceedings in the United States Court of Appeals for the Eleventh Circuit were the petitioner Ellis L. McDonald, his codefendants Lambert C. Mims, Charles S. Shaw, and Francis A. Wilke, Jr., and the respondent United States of America. At this time, only petitioner Ellis L. McDonald seeks review by this Honorable Court; however, the interests of petitioner's codefendants may be affected by that review.

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ELLIS L. MCDONALD,
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PETITION FOR A WRIT OF CERTIORARI

Your petitioner Ellis L. McDonald respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Eleventh Circuit, entered in the above-entitled proceeding on December 15, 1993.

OPINIONS BELOW

The opinion of the Court of Appeals for the Eleventh Circuit is unpublished, and will not be reported. It is reprinted as Appendix A in the appendix hereto.

JURISDICTION

The judgment of the Court of Appeals for the Eleventh Circuit was rendered on December 15, 1993, and this petition is filed within ninety (90) days of said date. The

jurisdiction of this Honorable Court to review the judgment of the Eleventh Circuit is invoked under 28 U.S.C. Section 1254(1).

STATUTES INVOLVED

Title 18 U.S.C. Section 1961 et seq., entitled "Racketeer Influenced and Corrupt Organizations." The provisions involved are lengthy, and their pertinent text is reprinted as Appendix B in the appendix hereto.

RULES OF COURT INVOLVED

Rule 8(b) of the Federal Rules of Criminal Procedure. Said rule reads:

> "Rule 8. Joinder of Offenses and of Defendants.
>
> ". . . .
>
> "(b) Joinder of Defendants. Two or more defendants may be charged in the same indictment or information if they are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses. Such defendants may be charged in one or more counts together or separately and all of the defendants need not be charged in each count."

STATEMENT OF THE CASE

Petitioner McDonald was indicted by the United States Grand Jury for the Southern District of Alabama, and charged with numerous violations of federal law in a thirty-six count indictment. This constituted the basis for federal jurisdiction in the district court. The indictment is reprinted as Appendix C ir the appendix hereto. In addition to the defendants who were parties to the proceedings in the court below, the indictment charged three other persons who became government witnesses or otherwise were not involved in the appeal to the Eleventh Circuit.

Count one charged McDonald, Lambert C. Mims and F. Lee Jackson with conducting the affairs of an enterprise through a pattern of racketeering activity, in violation of 18 U.S.C. Section 1962(c). Five predicate acts of racketeering were alleged, which corresponded to five substantive offenses charged elsewhere in the indictment. Counts two, three and four concerned Hobbs Act extortion which involved the proposed construction of a steam plant, a facility which would generate steam for use as energy by burning solid waste. Count two charged McDonald, Mims and Charles S. Shaw with a Hobbs Act conspiracy. Count three named these three defendants in a substantive Hobbs Act extortion, while count four charged McDonald and Mims with a separate substantive Hobbs Act extortion.

Counts five through twenty-one concerned the defrauding of Scott Paper Company through inflated billings which involved the use of the mails. Count five charged McDonald, Jackson, and Michael Taylor with an 18 U.S.C. Section 371 conspiracy to defraud Scott Paper Company through the use of the mails. Count six charged McDonald, Jackson, Taylor, and William E. Cullum with a substantive act of mail fraud, in violation of 18 U.S.C. Section 1341. Counts six through twenty-one charged Jackson and Taylor with substantive acts of mail fraud.

Counts twenty-two through twenty-six dealt with the defrauding of the Mobile Water Service System through the use of the mails by means of bid rigging and kickbacks. Count twenty-two charged McDonald, Jackson, and Francis A. Wilkie with an 18 U.S.C. Section 371 conspiracy in this regard. Counts twenty-two through twenty-six charged McDonald, Wilkie and Jackson with substantive acts of mail fraud.

Count twenty-seven charged McDonald with obstruction of justice for attempting to induce Cullum to give false testimony in Cullum's forthcoming trial on criminal

tax charges. Counts twenty-eight through thirty-five charged various tax offenses against McDonald. Count thirty-six was a forfeiture count, which is not germane to the issues here presented.

The enterprise designated in the RICO count was Campbell Construction Engineers, Inc. (CCEI). CCEI was an entirely legitimate business owned by McDonald, which engaged in various forms of contracting work.

The following schematic will assist the reader in understanding the nature of the joinder of offenses and defendants in this case:

Offense	Count Number	Defendants
	COUNT 1	
RICO—18 U.S.C. 1962(c)		McDonald, Mims, Jackson
Racketering Predicate Acts		Corresponding Count(s) of indictment
1. Mail fraud		23 through 26
2. Hobbs Act extortion		3
3. Hobbs Act extortion		4
4. Mail fraud		6 through 21
5. Obstruction of justice		27
	The Steam Plant Counts	
	COUNT 2	
Hobbs Act conspiracy		McDonald, Mims, Shaw
	COUNT 3	
Hobbs Act extortion		McDonald, Mims, Shaw
	COUNT 4	
Hobbs Act extortion		McDonald, Mims
	The Scott Paper Company Counts	
	COUNT 5	
Mail fraud conspiracy		McDonald, Jackson, Taylor
	COUNT 6	
Mail fraud		McDonald, Jackson, Taylor, Cullum
	COUNTS 7-21	
Mail fraud		Jackson, Taylor

The Mobile Water Service System Counts

COUNT 22

Mail fraud conspiracy	McDonald, Jackson, Wilkie

COUNTS 23-26

Mail fraud	McDonald, Jackson, Wilkie

The Tax-Related Counts

COUNT 27

Obstruction of justice	McDonald

COUNTS 28-35

Conspiracy to defraud the IRS; filing false tax returns; tax evasion	McDonald

McDonald was convicted of counts one, four, five, six, twenty-two, twenty-three, twenty-seven, and twenty-nine through thirty-five. He was acquitted on counts two, three, twenty-four, twenty-five, and twenty-six.

McDonald moved to sever counts two, three and four (which also constituted the steam plant predicate acts) from the remainder of the indictment, which motion was denied by the district court.

The evidence adduced at trial demonstrated that the only commonality amongst the steam plant racketeering predicate acts, and the Scott Paper Company/Mobile Water Service System racketeering predicate acts, was that they were in some way related to the enterprise, CCEI. The object of the steam plant predicate acts (Hobbs Act extortion, through the use of political influence) was for CCEI to be awarded to contract to construct the steam plant. The Scott Paper/Water Service predicate acts (mail fraud) involved inflated billings, bid rigging and kickbacks on contracts which CCEI had with Scott Paper and the Water Service. In all other respects, the two sets of predicate acts were dissimilar.

McDonald was the only participant in both sets of predicate acts; other than McDonald, the two sets of predicate acts involved totally different actors. The vic-

tims in both sets of predicate acts were different. Totally different criminal statutes were involved in the two sets of predicate acts. The purposes and methods of commission of the two sets of predicate acts were also totally different. The steam plant predicate acts involved efforts to obtain *legitimate* business, through the means of extortion, while the Scott Paper/Water Service predicate acts involved efforts to obtain *dishonest* monies through fraudulent billing and the like. Moreover, the eventual results of the predicate acts were different. With respect to the steam plant acts, McDonald was unsuccessful—the attempted extortion did not work, and no legitimate business was obtained. However, with respect to the Scott Paper/Water Service predicate acts, the fraudulent schemes were eminently successful in obtaining illegitimate monies. Furthermore, the steam plant extortion was limited in time to the initial stages of the proposal for construction of the facility, while the mail fraud was a continuous scheme which repeated itself constantly over an extremely lengthy period of time.

It should be noted here that the obstruction of justice predicate act was related only to the tax counts of the indictment, which named McDonald as the sole defendant. The tax counts concerned the laundering of unreported monies out of CCEI, for McDonald's benefit; the government contended that these laundered monies represented the proceeds of the Scott Paper/Water Service mail frauds.

In the Eleventh Circuit Court of Appeals, McDonald contended that separate patterns of racketeering activity involving the same enterprise constitute separate violations of 18 U.S.C. Section 1962(c), and therefore separate RICO offenses. McDonald further argued that the steam plant predicate acts constituted one pattern of racketeering activity, while the Scott Paper/Water Service predicate acts constituted an entirely separate pattern of racketeering activity. As such, McDonald con-

tended that two separate RICO offenses were improperly joined in one count of the indictment. Since the RICO count permitted the joinder of the steam plant counts and the Scott Paper/Water Service counts in one indictment, McDonald argued that this resulted in an improper joinder of defendants under Rule 8(b), Fed.R.Crim.Proc. McDonald also argued that the steam plan ar ! Scott Paper/Water Service predicate acts did not form a patter, of racketeering activity because the two sets of predicate acts were not related to one another, but only to the enterprise, CCEI. The Eleventh Circuit summarily rejected these contentions.

REASONS FOR GRANTING THE WRIT

I. AND II.

THE COURT OF APPEALS FOR THE ELEVENTH CIRCUIT HAS DECIDED AN IMPORTANT QUESTION OF FEDERAL LAW WHICH HAS NOT BEEN, BUT SHOULD BE, SETTLED BY THIS COURT.

18 U.S.C. Section 1962(c) provides, "It shall be unlawful for any person employed by or associated with any enterprise . . . to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity . . . ." The issue of whether separate patterns of racketeering activity involving the same enterprise constitute separate violations of Section 1962(c), and therefore separate RICO offenses, impacts profoundly upon the joinder provisions of Rule 8(b) of the Federal Rules of Criminal Procedure.

In *H.J. Inc. v. Northwestern Bell Telephone Co.*, 492 U.S. 229, 106 L.Ed.2d 195, 109 S.Ct. 2893 (1989), this Court held that RICO's pattern requirement consists of two elements: continuity and relationship. Continuity is not at issue in this case. The *H.J. Inc.* Court concluded that racketeering acts are related, within the meaning of the pattern requirement, if they "[H]ave the same or similar purposes, results, participants, victims, or methods of

commission, or otherwise are interrelated by distinguishing characteristics and are not isolated events." 492 U.S. at 240, 106 L.Ed.2d at 208 (internal quotation marks omitted). Although the various courts of appeals have since utilized this test on numerous occasions to determine whether or not a *single* pattern of racketeering activity existed, there appears to be no court which has utilized it to determine whether *separate* patterns were established. Indeed, there are no published decisions of the courts of appeals which deal with the issue of whether, for *joinder* purposes, separate patterns of racketeering activity constitute separate RICO offenses. The courts of appeals have, however, faced this question in the double jeopardy context, before the *H.J. Inc.* decision was rendered, and have answered it affirmatively.

Several courts of appeals have held that where there are separate patterns of racketeering activity involving the same enterprise, separate RICO offenses have been committed, with the result that there is no double jeopardy bar to the successive prosecution of both patterns/offenses. *U.S. v. Dean*, 647 F.2d 779, 785-788 (8th Cir. 1981), modified *en banc* on other grounds, 667 F.2d 729 (8th Cir. 1981); *U.S. v. Langella*, 804 F.2d 185, 188-189 (2nd Cir. 1986); *U.S. v. Ciancaglini*, 858 F.2d 923, 927-29 (3rd Cir. 1988); *U.S. v. Russotti*, 717 F.2d 27, 32-34 (2nd Cir. 1983). The Eleventh Circuit itself has also so held, in *U.S. v. Ruggiero*, 754 F.2d 927, 931-33 (11th Cir. 1985).

These opinions reasoned that the evil Congress sought to address "[W]as the use of a pattern of racketeering activity as a means of operating an enterprise." *Dean*, 647 F.2d at 787. Consequently, each distinct pattern of racketeering activity constitutes a separate unit of prosecution—that is, a separate RICO offense. *Id.* This logic is supported by this Court's opinion in *United States v. Turkette*, 452 U.S. 576, 69 L.Ed.2d 246, 101 S.Ct. 2524 (1981), wherein the Court held that the terms "enter-

prise" and "pattern of racketeering activity" are entirely discrete concepts. In reaching this conclusion, the Court stated:

> "In order to secure a conviction under RICO, the Government must prove both the existence of an 'enterprise' and the connected 'pattern of racketeering activity.' "

452 U.S. at 583, 69 L.Ed.2d at 254. Although *Turkette* does not specifically so hold, the above-quoted statement infers that each separate pattern of racketeering activity involving the same enterprise will support a separate RICO conviction. It should also be noted that if the courts of appeals are correct in their analysis, their logic necessarily applies not only to double jeopardy issues, but also to issues of improper joinder.

The express language of Section 1962(c) also clearly indicates that Congress intended for each separate pattern of racketeering activity involving the same enterprise to constitute a separate RICO offense. The statute makes it unlawful for any person to conduct the affairs of "any enterprise" through "*a* pattern of racketeering activity." Had Congress intended for different patterns to constitute one RICO offense with respect to the same enterprise, it would have used the plural ("patterns") instead of the singular ("a pattern") in the statute. As the statute was enacted, it creates a unit of prosecution consisting of an enterprise and a single connected pattern of racketeering activity, as opposed to an enterprise and multiple connected patterns of racketeering. The latter approach would focus solely upon the enterprise as an allowable unit of prosecution, and would result in overwhelming joinder problems.

Rule 8(b), Fed.R.Crim.Proc., provides in pertinent part, "Two or more defendants may be charged in the same indictment or information if they are alleged to have

participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses." It is well established that in order to demonstrate that multiple defendants have engaged in the "same series of acts or transactions," the government must show that the acts alleged are unified "by some substantial identity of facts and/or participants." *See, e.g., U.S. v. Morales*, 868 F.2d 1562, 1569 (11th Cir. 1989); *U.S. v. Wilson*, 894 F.2d 1245, 1253 (11th Cir. 1990). The requirement of substantial identity between facts and/or participants "is designed to prevent joinder of separate and unrelated offenses in multiple defendant situations." *U.S. v. Butera*, 677 F.2d 1376, 1384 (11th Cir. 1982).

There is no question but that the RICO statute permits more extensive joinder of defendants and offenses than would otherwise be allowable. However, if separate RICO patterns can be joined in the same count of one indictment, Rule 8(b) has effectively been abrogated, and all manner of disparate offenses and unrelated defendants can be cobbled together without the requisite substantial identity between facts and/or participants. This is precisely what occurred in the case at bar. The steam plant predicate acts and the Scott Paper/Water Service predicate acts constituted two separate patterns of racketeering activity. The steam plant counts involved three defendants and an extortion scheme, while the Scott Paper/Water Service counts involved an entirely unrelated mail fraud scheme and five defendants; only one defendant—McDonald—was a participant in both schemes.

The ultimate consequence of a conclusion that separate patterns of racketeering activity involving the same enterprise constitute but one offense, will be a "rule" that totally unconnected offenses and defendants can be joined for the sole reason, without more, that they have some relationship to the same RICO enterprise. Of course, this would be no rule at all, since it would amount to the repeal of Fed.R.Crim.Proc. 8(b).

The courts of appeals have never addressed the precise issue before this Court, and have never addressed this issue in any context since *H.J. Inc., supra,* was decided. *H.J. Inc.'s* definition of the relationship between predicate acts provides the ideal vehicle for delineating between separate patterns of racketeering activity. The RICO statute is ever-increasingly used by prosecutors, and that statute continues to be expansively interpreted by the lower courts. Treating separate racketeering patterns involving the same enterprise as one RICO offense expands the statute to the bursting point. It is respectfully submitted that the writ of certiorari should be granted, in order that this Court can, in light of its decision in *H.J. Inc.,* provide guidance to the courts of appeals on the issue of whether separate patterns of racketeering activity involving the same enterprise constitute separate RICO offenses for joinder purposes under Fed.R.Crim.Proc. 8(b).

III.

THE DECISION OF THE ELEVENTH CIRCUIT COURT OF APPEALS CONFLICTS WITH AN APPLICABLE DECISION OF THIS COURT.

As was noted above, in *H.J. Inc. v. Northwestern Bell Telephone Co., supra,* this Court defined the relationship requirement of a pattern of racketeering activity. The Court held that racketeering acts are related if they "[H]ave the same or similar purposes, results, participants, victims, or methods of commission, or otherwise are interrelated by distinguishing characteristics and are not isolated events." 492 U.S. at 240, 106 L.Ed.2d at 208 (internal quotation marks omitted). As the Court specifically observed, this definition speaks "solely" in terms of the relationship of the predicate acts "one to another." *Id.* Plainly, this Court held that the relationship element of the pattern requirement is satisfied only when the predicate acts are related *to one another.* Nowhere did this Court state that the relationship element can be satisfied solely by a predicate act's relationship to the enterprise itself.

As was noted in the preceding statements of the case, the two series of predicate acts in the case at bar bore no relationship to one another; rather, their only common characteristic was a connection to the enterprise itself. The steam plant predicate acts involved the extortion of legitimate income from one victim, while the Scott Paper/ Water Service predicate acts involved the fraudulent obtaining of legitimate income from different victims. The two sets of predicate acts involved totally separate participants, with the sole exception of McDonald. McDonald's extortion was unsuccessful, while the mail fraud scheme was highly successful. The steam plant counts involved extortion by the attempted use of political influence, while the mail fraud counts involved fraudulent deception. The steam plant extortion was a one-time occurrence, temporally limited to the beginning stages of the proposal for the construction of the facility, while the mail fraud was an ongoing scheme which repeated itself over an extensive period of time. In point of fact, the steam plant extortion was an isolated occurrence. The *only* connection between the extortion and mail fraud predicate acts was not some relationship to one another, but their relationship to the enterprise, since they were all undertaken either through or for the purpose of benefiting the enterprise, CCEI.

If the mere relationship of racketeering acts to a legitimate business such as CCEI, without more, suffices to create a pattern of racketeering activity, there is no limit to the number of unrelated offenses and defendants which can be joined in one indictment whenever a RICO violation is alleged.

At this juncture, it should be noted that in the context of organized crime, the connection of predicate acts to an enterprise can supply the requisite relationship between the acts, since the business of organized crime is—by definition—crime. As such, no matter how otherwise disparate, racketeering acts can be related because they are

simply individual manifestations of the way in which an organized crime enterprise carries on its normal business. In such a scenario, the racketeering acts are linked to each other in satisfaction of the *H.J. Inc.* requirement that the relationship between acts must be determined solely upon their connection "one to another." These considerations are not present where a legitimate business, such as CCEI, is concerned.

It should also be noted that the Second Circuit Court of Appeals has made the conclusory statement that "[T]wo racketeering acts that are not directly related to each other may nevertheless be related indirectly because each is relatd to the RICO enterprise." *U.S. v. Indelicato,* 865 F.2d 1370, 1383 (2nd Cir. 1989); *U.S. v. Minicone,* 960 F.2d 1099, 1106 (2nd Cir. 1992). Although this language was used with reference to RICO enterprises which were constituted by organized crime families, the ominously broad sweep of that language illustrates the nature of the problem.

The decision of the Court of Appeals for the Eleventh Circuit flatly conflicts with this Court's decision in *H.J. Inc.* The writ of certiorari should issue for that reason, and in order for this Court to unequivocally state the nature of the necessary relationship between predicate acts in the context of legitimate businesses which are alleged to be RICO enterprises.

CONCLUSION

For the foregoing reasons, this petition for certiorari should be granted, and this cause remanded to the Eleventh Circuit Court of Appeals for appropriate disposition.

Respectfully submitted,

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APPENDIX A

[Filed Dec. 15, 1993]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 90-7436

D. C. Docket No. CR89-00105-B

UNITED STATES OF AMERICA,
Plaintiff-Appellee,
versus

ELLIS L. MCDONALD, LAMBERT C. MIMS,
CHARLES S. SHAW, FRANCIS A. WILKIE, JR.,
Defendants-Appellants.

No. 91-7145

D.C. Docket No. CR89-00105-CB

UNITED STATES OF AMERICA,
Plaintiff-Appellee,
versus

CHARLES S. SHAW, FRANCIS A. WILKIE, JR.,
ELLIS L. MCDONALD, LAMBERT C. MIMS,
Defendants-Appellants,

No. 91-7333

D.C. Docket No. CR89-00105-CB

UNITED STATES OF AMERICA,
Plaintiff-Appellee,
versus

LAMBERT C. MIMS,
Defendant-Appellant.

Appeals from the United States District Court
for the Southern District of Alabama

(December 15, 1993)

Before BIRCH, DUBINA and BLACK, Circuit Judges.

PER CURIAM:

I.

This is a complex criminal case involving four defendants and twenty-nine issues raised on appeal. The record demonstrates that the defendants were charged with numerous criminal violations including, among other things, racketeering, extortion, conspiracy to defraud, fraud through the use of the mails, obstruction of justice and various tax charges. This case was tried to a jury in the United States District Court for the Southern District of Alabama. The trial lasted approximately two and a half months. With the exception of defendant Shaw, who was convicted on both of the charges made against him, the remaining defendants were convicted of some charges,

but acquitted of others. Each defendant appeals his conviction. Additionally, defendant McDonald appeals his sentence and the denial of his post-verdict motion.

II.

During the trial the government presented massive amounts of evidence through witnesses and documents that the defendants were involved in an extortion referred to as "the Steam Plant Extortion," fraud and bribery of the Mobile Water Service System, tax fraud, and obstruction of justice. After carefully reviewing the massive record in this case, and after reading the briefs and having the benefit of oral argument, we are persuaded that there is no merit to any of the issues the defendants present in this appeal concerning their convictions. Therefore the convictions of each defendant are summarily affirmed.

II.

Defendant McDonald argues that, in sentencing [1] him on the four counts [2] subject to a sentencing guidelines sentence, the district court improperly added two levels to the adjusted offense level for obstruction of justice based solely on the fact that McDonald had been indicted for tampering with the jury. In its brief, the government concedes that, pursuant to previous holdings of this court, the district court is required to make findings, based upon a preponderance of the evidence, and cannot base its findings solely on the allegations contained within an indictment. *See United States v. Andrews,* 953 F.2d 1312 (11th Cir. 1992); *United States v. Castalanos,* 904 F.2d 1490, 1495 (11th Cir. 1990). Accordingly, we vacate McDonald's sentence and remand his case to the district

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[1] Ellis McDonald is the only defendant to appeal his sentence.

[2] Counts One, Twenty-seven, Twenty-eight and Thirty-five.

court for resentencing on Counts One, Twenty-seven, Twenty-eight and Thirty-five.[3]

AFFIRMED in part, VACATED in part and REMANDED for resentencing.

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[3] We also observe from the record that the adjusted offense level used at sentencing was incorrectly determined, by a mistake in the addition, to be twenty-three. The base offense level was determined to be nineteen. Defendant McDonald then received a four level increase for role in the offense and a two level increase for obstruction of justice. These figures result in a total adjusted offense level of twenty-five instead of twenty-three. The district court should correct this error upon remand.

APPENDIX B

CHAPTER 96—RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS

Sec.

1961. Definitions.
1962. Prohibited activities.
1963. Criminal penalties.
1964. Civil remedies.
1965. Venue and process.
1966. Expedition of actions.
1967. Evidence
1968. Civil investigative demand.

* * * *

§ 1961. Definitions.

As used in this chapter—

(1) "racketeering activity" means (A) any act or threat involving murder, kidnaping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or dealing in narcotic or other dandgerous drugs, which is chargeable under State law and punishable by imprisonment for more than one year; (B) any act which is indictable under any of the following provisions of title 18, United States Code: Section 201 (relating to bribery), section 224 (relating to sports bribery), sections 471, 472, and 473 (relating to counterfeiting), section 659 (relating to theft from interstate shipment) if the act indictable under section 659 is felonious, section 664 (relating to embezzlement from pension and welfare funds), sections 891-894 (relating to extortionate credit transactions), section 1029 (relating to fraud and related activity in connection with access devices), secttion 1084 (relating to the transmission of gambling information), section 1341 (relating to mail fraud), section 1343 (relating to wire fraud), section 1344 (relating to financial institution fraud),

sections 1461-1465 (relating to obscene matter), section 1503 (relating to obstruction of justice), section 1510 (relating to obstruction of criminal investigations), section 1511 (relating to the obstruction of State or local law enforcement), section 1512 (relating to tampering with a witness, victim, or an informant), section 1513 (relating to retaliating against a witness, victim, or an informant), section 1951 (relating to interference with commerce, robbery, or extortion), section 1952 (relating to racketeering), section 1953 (relating to interstate transportation of wagering paraphernalia), section 1954 (relating to unlawful welfare fund payments), section 1955 (relating to the prohibition of illegal gambling businesses), section 1956 (relating to the laundering of monetary instruments), section 1957 (relating to engaging in monetary transactions in property derived from specified unlawful activity), section 1958 (relating to use of interstate commerce facilities in the commission of murder-for-hire), sections 2251-2252 (relating to sexual exploitation of children), sections 2312 and 2313 (relating to interstate transportation of stolen motor vehicles), sections 2314 and 2315 (relating to interstate transportation of stolen property), section 2321 (relating to trafficking in certain motor vehicles or motor vehicle parts), sections 2341-2346 (relating to trafficking in contraband cigarettes), sections 2421-24 (relating to white slave traffic), (C) any act which is indictable under title 29, United States Code, section 186 (dealing with restrictions on payments and loans to labor organizations) or section 501(c) (relating to embezzlement from union funds), (D) any offense involving fraud connected with a case under title 11, fraud in the sale of securities, or the felonious manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in narcotic or other dangerous drugs, punishable under any law of the United States,

or (E) any act which is indictable under the Currency and Foreign Transactions Reporting Act;

(2) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, any political subdivision, or any department, agency, or instrumentality thereof;

(3) "person" includes any individual or entity capable of holding a legal or beneficial interest in property;

(4) "enterprise" includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals asociated in fact although not a legal entity;

(5) "pattern of racketeering activity" requires at least two acts of racketeering activity, one of which occurred after the effective date of this chapter and the last of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity;

(6) "unlawful debt" means a debt (A) incurred or contracted in gambling activity which was in violation of the law of the United States, a State or political subdivision thereof, or which is unenforceable under State or Federal law in whole or in part as to principal or interest because of the laws relating to usury, and (B) which was incurred in connection with the business of gambling in violation of the law of the United States, a State or political subdivision thereof, or the business of lending money or a thing of value at a rate usurious under State or Federal law, where the usurious rate is at least twice the enforceable rate;

(7) "racketeering investigator" means any attorney or investigator so designated by the Attorney General

and charged with the duty of enforcing or carrying into effect this chapter;

(8) "racketeering investigation" means any inquiry conducted by any racketeering investigator for the purpose of ascertaining whether any person has been involved in any violation of this chapter or of any final order, judgment, or decree of any court of the United States, duly entered in any case or proceeding arising under this chapter;

(9) "documentary material" includes any book, paper, document, record, recording, or other material; and

(10) "Attorney General" includes the Attorney General of the United States, the Deputy Attorney General of the United States, the Associate Attorney General of the United States, any Assistant Attorney General of the United States, or any employee of the Department of Justice or any employee of any department or agency of the United States so designated by the Attorney General to carry out the powers conferred on the Attorney General by this chapter. Any department or agency so designated may use in investigations authorized by this chapter either the investigative provisions of this chapter or the investigative power of such department or agency otherwise conferred by law.

* * * *

§ 1962. Prohibited activities

(a) It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt in which such person has participated as a principal within the meaning of section 2, title 18, United States Code, to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in

acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce. A purchase of securities on the open market for purposes of investment, and without the intention of controlling or participating in the control of the issuer, or of assisting another to do so, shall not be unlawful under this subsection if the securities of the issuer held by the purchaser, the members of his immediate family, and his or their accomplices in any pattern or racketeering activity or the collection of an unlawful debt after such purchase do not amount in the aggregate to one percent of the outstanding securities of any one class and do not confer, either in law or in fact, the power to elect one or more directors of the issuer.

(b) It shall be unlawful for any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.

(c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

(d) It shall be unlawful for any person to conspire to violate any of the provisions of subsection (a), (b), or (c) of this section.

* * * *

APPENDIX C

THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA

Criminal No. ———

UNITED STATES OF AMERICA

vs.

ELLIS L. MCDONALD, F. LEE JACKSON, JR.,
CHARLES S. SHAW, LAMBERT C. MIMS,
MICHAEL A. TAYLOR, WILLIAM E. CULLUM,
FRANCIS A. WILKIE, JR.

Count 1: 18 U.S.C. § 1962(c)

Counts 2-4: 18 U.S.C. § 1951

Counts 6-21, 23-26: 18 U.S.C. § 1341

Count 27: 18 U.S.C. § 1503

Counts 5, 22 & 28: 18 U.S.C. § 371

Counts 29, 31: 26 U.S.C. § 7206(2)

Counts 30, 32-35: 26 U.S.C. § 7201

SUPERSEDING INDICTMENT

The Grand Jury charges:

COUNT ONE

A. At all times material herein ELLIS L. McDONALD was president and owner of Campbell Piping Contractors, Inc. and it's wholly-owned subsidiary, Campbell Construction Engineers, Inc. (CCEI).

B. At all times material herein F. LEE JACKSON, JR. was employed by CCEI as superintendent in charge of all work done by CCEI at 1) the Mobile Water Service System (MWSS) under the equipment rental contract and 2) Scott Paper Company (Scott) in connection with waste hauling contracts.

C. At all times material herein, until October 1, 1985, LAMBERT C. MIMS was one of three elected city commissioners of the City of Mobile, and from June 5, 1984 until October 1, 1985 served as Mayor of the City of Mobile.

D. At all times material herein CCEI constituted an "enterprise" as that term is defined by Title 18, United States Code, Section 1961(4), which engaged in, and the activities of which affected, interstate commerce.

E. From on or about 1974 continuing through on or about 1988, within the Southern District of Alabama and within the jurisdiction of this Court, the defendants ELLIS L. MCDONALD, F. LEE JACKSON, JR., LAMBERT C. MIMS and other persons known and unknown to the Grand Jury, being persons employed by and associated with CCEI, the enterprise described in paragraph D. above, which was engaged in and the activities of which affected interstate commerce, unlawfully and wilfully did conduct and participate, directly and indirectly, in the conduct of the affairs of the enterprise through a pattern of racketeering activity as specified in paragraph F., below.

F. *Pattern of Racketeering Activity*

The pattern of racketeering activity committed by the defendants consisted of the following acts of racketeering.

Racketeering Act Number One

Any one of the following acts of bribery or mail fraud committed by ELLIS L. MCDONALD and F. LEE JACKSON, JR.

(A) From on or about 1980 continuing through on or about June 1, 1987, ELLIS L. MCDONALD and F. LEE JACKSON, JR. did provide money to Francis A. Wilkie while a public servant, namely Administrator of the MWSS with intent that Francis A. Wilkie's opinion, judgment, exercise of discretion and other action concerning work performed and billed by CCEI under the equipment rental contract with the MWSS would thereby be corruptly influenced; in violation of Section 13A-10-61(a) of the Code of Alabama (1975), an act of racketeering as defined in Title 18, United States Code, Section 1961(1)(A).

(B) The Grand Jury realleges all allegations contained in paragraphs 1 and 2 of Count Twenty-Three and further alleges that on or about the 23rd day of June, 1980, in Mobile County, in the Southern District of Alabama and within the jurisdiction of this Court, the defendants, for the purpose of executing the aforesaid scheme and artifice to defraud, did cause to be delivered through the United States mail an envelope addressed to Legal Ad Department the Mobile Press Register, P. O. Box 2488, Mobile, Alabama 36601 containing a letter and an "Invitation for Bids"; in violation of Title 18, United States Code, Section 1341 and Section 2.

(C) The Grand Jury realleges all allegations contained in paragraphs 1 and 2 of Count Twenty-Three and further alleges that on or about the 22nd day of July, 1980, in Mobile County, in the Southern District of Alabama and within the jurisdiction of this Court, the defendants, for the purpose of executing the aforesaid scheme and artifice to defraud, did cause to be delivered through the United States mail an envelope addressed to Campbell Construction Engineers, Inc., Rt. 10, 1525 Azalea Road, Mobile, Alabama 36609 containing a letter, in violation of Title 18, United States Code, Section 1341 and Section 2.

(D) The Grand Jury realleges all allegations contained in Paragraphs 1 and 2 of Count Twenty-Three and further alleges that on or about the 9th day of August, 1983, in Mobile County in the Southern District of Alabama and within the jurisdiction of this Court, the defendants, for the purpose of executing the aforesaid scheme and artifice to defraud, did cause to be delivered through the United States mail an envelope addressed to Campbell Construction Engineers, Inc., Rt. 10, 1525 Azalea Road, Mobile, Alabama 36609 containing a letter; in violation of Title 18, United States Code, Section 1341 and Section 2.

(E) The Grand Jury realleges all allegations contained in paragraphs 1 and 2 of Count Twenty-Three and further alleges that on or about the 19th day of June, 1984, in Mobile County in the Southern District of Alabama and within the jurisdiction of this Court, the defendants, for the purpose of executing the aforesaid scheme and artifice to defraud, did cause to be delivered through the United States mail an envelope addressed to Campbell Construction Engineers, Inc., Rt. 10, 1525 Azalea Road, Mobile, Alabama 36609, containing a letter; in violation of Title 18, United States Code, Section 1341 and Section 2.

(F) The act of mail fraud alleged in Count Twenty-Three of this indictment which is realleged here as though fully set forth.

(G) The act of mail fraud alleged in Count Twenty-Four of this indictment which is realleged here as though fully set forth.

(H) The act of mail fraud alleged in Count Twenty-Five of this indictment which is realleged here as though fully set forth.

(I) The act of mail fraud alleged in Count Twenty-Six of this indictment which is realleged here as though fully set forth.

Racketeering Act Number Two

The defendants ELLIS L. MCDONALD and LAMBERT C. MIMS violated Title 18, United States Code, Section 1951 as described in Count Three of this indictment, which is realleged here as though fully set forth.

Racketeering Act Number Three

The defendants ELLIS L. MCDONALD and LAMBERT C. MIMS violated Title 18, United States Code, Section 1951 as described in Count Four of this indictment, which is realleged here as though fully set forth.

Racketeering Act Number Four

Any one of the following acts of mail fraud:

(A) The act of mail fraud committed by ELLIS MCDONALD and F. LEE JACKSON, JR. alleged in Count Six of this indictment which is realleged here as though fully set forth.

(B) The act of mail fraud committed by F. LEE JACKSON, JR. alleged in Count Seven of this indictment which is realleged here as though fully set forth.

(C) The act of mail fraud committed by F. LEE JACKSON, JR. alleged in Count Eight of this indictment which is realleged here as though fully set forth.

(D) The act of mail fraud committed by F. LEE JACKSON, JR. alleged in Count Nine of this indictment which is realleged here as though fully set forth.

(E) The act of mail fraud committed by F. LEE JACKSON, JR. alleged in Count Ten of this indictment which is realleged here as though fully set forth.

(F) The act of mail fraud committed by F. LEE JACKSON, JR. alleged in Count Eleven of this indictment which is realleged here as though fully set forth.

(G) The act of mail fraud committed by F. LEE JACKSON, JR. alleged in Count Twelve of this indictment which is realleged here as though fully set forth.

(H) The act of mail fraud committed by F. LEE JACKSON, JR. alleged in Count Thirteen of this indictment which is realleged here as though fully set forth.

(I) The act of mail fraud committed by F. LEE JACKSON, JR. alleged in Count Fourteen of this indictment which is realleged here as though fully set forth.

(J) The act of mail fraud committed by F. LEE JACKSON, JR. alleged in Count Fifteen of this indictment which is realleged here as though fully set forth.

(K) The act of mail fraud committed by F. LEE JACKSON, JR. alleged in Count Sixteen of this indictment which is realleged here as though fully set forth.

(L) The act of mail fraud committed by F. LEE JACKSON, JR. alleged in Count Seventeen of this indictment which is realleged here as though fully set forth.

(M) The act of mail fraud committed by F. LEE JACKSON, JR. alleged in Count Eighteen of this indictment which is realleged here as though fully set forth.

(N) The act of mail fraud committed by F. LEE JACKSON, JR. alleged in Count Nineteen of this indictment which is realleged here as though fully set forth.

(O) The act of mail fraud committed by F. LEE JACKSON, JR. alleged in Count Twenty of this indictment which is realleged here as though fully set forth.

(P) The act of mail fraud committed by F. LEE JACKSON, JR. alleged in County Twenty-One of this indictment which is realleged here as though fully set forth.

Racketeering Act Number Five

The defendant ELLIS L. MCDONALD violated Title 18, United States Code, Section 1503 as described in

Count Twenty-Seven of this indictment, which is realleged here as through fully set forth.

All in violation of Title 18, United States Code, Section 1962(c).

COUNT TWO

1. At all times relevant herein, ELLIS L. MCDONALD was owner and President of Campbell Piping Contractors, Inc. (Campbell Piping) and its subsidiary, Campbell Construction Engineers, Inc. (CCEI).

2. At various times relevant herein CHARLES S. SHAW was a real estate and insuratnce agent, and was an owner and/or participated as a principal in Alabama Energy Recovery, Inc., a company formed to submit a proposal to the City of Mobile for solid waste disposal.

3. At all times relevant herein, up until October 1, 1985 LAMBERT C. MIMS was one of three elected city commissioners of the City of Mobile, whose area of responsibility was Public Works, which included responsibility for waste disposal. From June 5, 1984 until October 1, 1985, LAMBERT C. MIMS served as Mayor of the City of Mobile, which office rotated among the three city commissioners.

4. At various times relevant herein Gerald Godwin was an owner of, or otherwise associated with two companies, T.B.S., Inc. and Area Services, Inc., which were formed to build and operate in Mobile County a steam generating plant to be fueled by burning solid waste. In order to be assured of having enough fuel to operate the proposed steam plant, Gerald Godwin needed commitments from both the City of Mobile and Mobile County that all solid waste whose disposal was controlled by those entities would be available for use as fuel at the steam plant. The equipment, supplies and other articles needed to build and operate the steam plant would be received, purchased and transported in interstate commerce. The intended purchaser of the steam to be gen-

erated by the proposed plant, the Degussa Corporation, was a German company, opearting in Alabama and doing business in both interstate and foreign commerce.

5. At all times relevant herein National Heritage Mortage Corporation of Birmingham, Alabama was a mortgage company which became involved in the negotiations to undertake the construction and/or financing the construction of the proposed steam plant. National Heritage Mortage Corporation was to handle the proposed project through the formation of an affiliated company, Mobile Waste Energy Project, Incorporated.

6. Beginning on or about October, 1980, and continuing through on or about October, 1985, in the Southern District of Alabama, Southern Division, ELLIS L. MCDONALD, CHARLES S. SHAW, and LAMBERT C. MIMS did unlawfully and knowingly conspire with each other and with other persons both known and unknown to the Grand Jury, to obstruct, delay and affect commerce, as that term is defined in Title 18, United States Code, Section 1951, and the movement of articles and commodities in such commerce, by extortion, as that term is defined in Title 18, United States Code, Section 1951.

It was a part of the conspiracy that the defendants did obtain for CHARLES S. SHAW certain property from Gerald Godwin, namely, a percentage of ownership in Area Services, Inc., with the consent of Gerald Godwin, such consent being induced by the wrongful use of threatened and actual fear, including the threatened and actual fear of economic and financial loss, and under color of official right, in that the defendants, both subtly and overtly, by actions, inactions and statements, made Gerald Godwin understand that Area Services, Inc. would not receive the commitments from the City of Mobile necessary to make the construction and operation of a steam plant possible for Area Services, Inc. unless and until

Gerald Godwin gave CHARLES S. SHAW a percentage of ownership in Area Services, Inc.

It was further a part of the conspiracy that the defendants attempted to obtain certain property of National Heritage Mortgage Corporation, namely the right to make the business decision of what construction company National Heritage Mortgage Corporation would contract with to build the proposed steam plant free from outside pressure wrongfully imposed, with the consent of National Heritage Mortgage Corporation, such consent being induced by the wrongful use of threatened and actual fear, including the threatened and actual fear of economic and financial loss, and under color of official right, in that the defendants threatened that both the county and the city officials would delay the signing of the contracts to supply the solid waste necessary for the fueling of the proposed steam plant unless National Heritage Mortgage Corporation assured ELLIS L. MCDONALD that his company would construct the steam plant.

All in violation of Title 18, United States Code, Section 1951 and Section 2.

COUNT THREE

The Grand Jury re-alleges all allegations contained in paragraphs 1 through 5 of Count Two and further alleges as follows:

6. From on or about November, 1983 continuing through on or about May 1, 1984, in the Southern District of Alabama, Southern Division, ELLIS L. MCDONALD, CHARLES S. SHAW and LAMBERT C. MIMS did unlawfully attempt to obstruct, delay and affect commerce, as that term is defined in Title 18, United States Code, Section 1951, by extortion, as that term is defined in Title 18, United States Code, Section 1951, in that the defendants knowingly and wilfully did obtain for the defendant CHARLES S. SHAW from Gerald Godwin a percentage of ownership in Area Serv-

ices, Inc., with the consent of Gerald Godwin, said consent being induced by the wrongful use of threatened and actual fear of economic and financial loss and injury and under color of official right, in that the defendants directly and indirectly, by action, inaction and statements, both subtle and overt, made Gerald Godwin understand that Area Services, Inc. would not receive the commitments from the City of Mobile necessary to make the construction and operation of the steam plant possible for Area Services, Inc. unless and until Gerald Godwin gave CHARLES S. SHAW a percentage of ownership in Area Services, Inc.

All in violation of Title 18, United States Code, Section 1951 and Section 2.

COUNT FOUR

The Grand Jury re-alleges all allegations contained in paragraphs 1, 3, 4 and 5 of Count Two and further alleges as follows:

6. From on or about September 26, 1985 continuing through and until on or about October 1, 1985, in the Southern District of Alabama, Southern Division, ELLIS L. MCDONALD, LAMBERT C. MIMS and others whose names are known to the Grand Jury, did unlawfully attempt to obstruct, delay and affect commerce, as that term is defined in Title 18, United States Code, Section 1951, by extortion as that term is defined in Title 18, United States Code, Section 1951, in that the defendants knowingly and wilfully did attempt to obtain certain property of National Heritage Mortgage Corporation, that is, the right to make the business decision of what construction company National Heritage Mortgage Corporation would contract with to build the proposed steam plant free from outside pressure wrongfully imposed, with the consent of National Heritage Mortgage Corporation, said consent being induced by the wrongful use of threatened and actual fear of economic and financial loss and injury and under color of official right, in that the defend-

ants directly and indirectly threatened that both county and city officials would delay the signing of the contracts to supply the solid waste necessary for the fueling of the proposed steam plant unless National Heritage Mortgage Corporation assured ELLIS L. MCDONALD that his company would construct the steam plant;

All in violation of Title 18, United States Code, Section 1951 and Section 2.

COUNT FIVE

1, At all times relevant herein, ELLIS L. MCDONALD was owner and President of Campbell Piping Contractors, Inc. (Campbell Piping) and its subsidiary, Campbell Construction Engineers, Inc. (CCEI). CCEI contracted with Scott Paper Company to haul various waste materials (e.g. reject lime, bark, liquor knots, sludge and trash) from Scott Paper Company's Mobile plant. ELLIS L. MCDONALD was familiar with the day-to-day operations of CCEI and regularly visited the various job sites where CCEI was opearting.

2. At all times relevant herein F. LEE JACKSON, JR. was employed by CCEI and was in charge of all contracts CCEI obtained to haul waste materials from Scott Paper Company. In addition, F. LEE JACKSON, JR., d/b/a Jackson Trucking, or one of the Jackson family companies: Midtown Trucking Co. or Bay Equipment Co., would, on occasion, sub-contract from CCEI certain of these hauling jobs, or would, with permission from ELLIS L. MCDONALD, contract directly with Scott Paper Company to perform hauling services.

3. From on or about December 28, 1980 to on or about October 6, 1985, MICHAEL A. TAYLOR was the Building and Grounds Maintenance Supervisor at Scott Paper Company's Mobile plant and as such had responsibility for the supervision of certain waste hauling jobs performed at Scott.

4. Beginning on or about prior to November, 1982, continuing through at least August 1, 1986, the exact dates being unknown to the Grand Jury, in the Southern District of Alabama, ELLIS L. MCDONALD, F. LEE JACKSON, JR. and MICHAEL A. TAYLOR, the defendants herein, did unlawfully, willfully and knowingly conspire with each other and with other individuals both known and unknown to the Grand Jury to commit the following offense against the United States:

> A) To knowingly and willfully devise and intend to devise a scheme and artifice to defraud and for obtaining money from Scott Paper Company by means of false and fraudulent pretenses and representations, and in furtherance of that scheme and to effect the objects thereof to cause the use of the United States mail; in violation of Title 18, United States Code, Section 1341.

5. It was a part of the conspiracy and of the scheme and artifice to defraud that the defendants would cause bills to be submitted to Scott Paper Company for the hauling of waste materials which bills were inflated in that they represented that more cubic yardage of waste material had been hauled away from Scott Paper Company's Mobile Plant than had actually been hauled away. It was further a part of the conspiracy and of the scheme to defraud that to facilitate the approval of certain of these bills for payment by Scott Paper Company, monies and/or items of value were given to MICHAEL A. TAYLOR and one or more additional employees of Scott Paper Company by F. LEE JACKSON, JR.

It was further a part of the conspiracy and of the scheme to defraud that after checks in payment of the inflated billings were received through the mails, the inflated amounts would go to the benefit of the defendants.

OVERT ACTS

In furtherance of the conspiracy, and to effect the objects thereof, the defendants did perform, among others, the following overt acts:

1. In 1983 MICHAEL A. TAYLOR told a Scott Paper Company employee that the bills for lime hauling should not be questioned as long as they stayed under 60 loads per week.

2. In the Spring of 1984 ELLIS L. MCDONALD gave $5,000.00 to F. LEE JACKSON, JR. for MICHAEL A. TAYLOR with the understanding that MCDONALD's money would be paid back out of a future bark haul.

3. On November 20, 1984 F. LEE JACKSON, JR. endorsed a Scott Paper Company check for $25,270.00 in payment of a bark haul and had Bill Cullum deposit it in his personal account. Cullum then cashed two checks for $5,000 and gave the cash to F. LEE JACKSON, JR., who then paid ELLIS L. MCDONALD and MICHAEL A. TAYLOR.

4. During 1984 and until October, 1985, MICHAEL A. TAYLOR approved the billings to Scott Paper Company from CCEI, Jackson Trucking, and Bay Equipment Company by signing the invoices, knowing that F. LEE JACKSON, JR. had caused the invoices to be padded.

All in violation of Title 18, United States Code, Section 371.

COUNT SIX

The Grand Jury re-alleges all allegations contained in paragraphs 1 through 3 of Count Five and further alleges as follows:

2. From on or about May, 1984, continuing through and until early 1987, WILLIAM E. CULLUM was a certified public accountant who owned Midtown Trucking, Incorporated, a corporation which purportedly rented

trucks and equipment to CCEI for use at Scott Paper Company and other locations.

3. Beginning on or about prior to November, 1982, continuing through and until at least August 1, 1986, the exact dates being unknown to the Grand Jury, ELLIS L. MCDONALD, F. LEE JACKSON, JR., MICHAEL A. TAYLOR, and WILLIAM E. CULLUM, the defendants herein, willfuly and knowingly devised and intended to devise a scheme and artifice to defraud and for obtaining money from Scott Paper Company by means of the following false and fraudulent pretenses and representations, well knowing at the time that the pretenses and representations were false when made, that is, the defendants devised a scheme whereby Scott Paper Company would be billed and pay for hauling services not actually performed.

It was a part of the scheme and artifice to defraud that the defendants would cause bills to be submitted to Scott Paper Company for the hauling of waste materials which bills were inflated in that they represented that more cubic yardage of waste material had been hauled away from Scott Paper Company's Mobile plant than had actually been hauled away.

It was further a part of the scheme and artifice to defraud that to facilitate the approval of certain of these bills for payment by Scott Paper Company, monies and/or items of value were given to MICHAEL A. TAYLOR and one or more additional employees of Scott Paper Company by F. LEE JACKSON, JR.

It was further a part of the scheme and artifice to defraud that after checks in payment of the inflated billings were received through the mails, the inflated amounts would go to the benefit of the defendants.

4. On or about the 19th of November, 1984, in Mobile County, in the Southern District of Alabama and within the jurisdiction of this Court, the defendants, for

the purpose of executing the aforesaid scheme and artifice to defraud, did cause to be delivered through the United States mail an envelope addressed to F. L. Jackson, P.O. Box 6562, 1301 N. Wilson Avenue, Mobile, Alabama, 36606, containing Scott Paper Company check number 425982 in the amount of $25,270.00;

All in violation of Title 18, United States Code, Section 1341 and Section 2.

COUNTS SEVEN THROUGH TWENTY-ONE

The Grand Jury re-alleges all allegations contained in paragraphs 1 and 2 of Count Six and further alleges as follows:

3. Beginning on or about prior to November, 1982, continuing through and until at least August 1, 1986, the exact dates being unknown to the Grand Jury, F. LEE JACKSON, JR. and MICHAEL A. TAYLOR, the defendants herein, willfully and knowingly devised and intended to devise a scheme and artifice to defraud and for obtaining money from Scott Paper Company by means of the following false and fraudulent pretenses and representations, well knowing at the time that the pretenses and representations were false when made, that is, the defendants devised a scheme whereby Scott Paper Company would be billed and pay for hauling services not actually performed.

It was a part of the scheme and artifice to defraud that the defendants would cause bills to be submitted to Scott Paper Company for the hauling of waste materials which bills were inflated in that they represented that more cubic yardage of waste material had been hauled away from Scott Paper Company's Mobile plant than had actually been hauled away.

It was further a part of the scheme and artifice to defraud that to facilitate the approval of certain of these

bills for payment by Scott Paper Company, monies and/or items of value were given to MICHAEL A. TAYLOR and one or more additional employees of Scott Paper Company by F. LEE JACKSON, JR.

It was further a part of the scheme and artifice to defraud that after checks in payment of the inflated billings were received through the mails, the inflated amounts would go to the benefit of the defendants and others.

4. On or about the following dates, in Mobile County, in the Southern District of Alabama and within the jurisdiction of this Court, the Defendants, for the purpose of executing the aforesaid scheme and artifice to defraud, did cause to be delivered through the United States mail envelopes addressed as follows, containing the following Scott Paper Company numbered checks in the following amounts:

COUNT	DATE	ADDRESS	CHECK NO.	AMOUNT
7	8/9/84	F. L. Jackson 1301 N. Wilson Avenue Prichard, AL 36610	411239	$24,990.00
8	2/14/85	Bay Equipment Co., Inc. 1301 North Wilson Avenue Prichard, AL 36610	437648	$34,545.00
9	5/20/85	Bay Equipment Co., Inc. 1301 North Wilson Avenue Prichard, AL 36610	452165	$29,260.00
10	7/8/85	Bay Equipment Co., Inc. 1301 North Wilson Avenue Prichard, AL 36610	458665	$26,544.00
11	7/25/85	Bay Equipment Co., Inc. 1301 North Wilson Avenue Prichard, AL 36610	461447	$27,720.00
12	7/26/84	Campbell Construction Engineers, Inc. Route 10, 1525 Azalea Road Mobile, Alabama 36609	409103	$10,290.00

COUNT	DATE	ADDRESS	CHECK NO.	AMOUNT
13	8/13/84	Campbell Construction Engineers, Inc. Route 10, 1525 Azalea Road Mobile, Alabama 36609	411637	$10,080.00
14	10/4/84	Campbell Construction Engineers, Inc. Route 10, 1525 Azalea Road Mobile, Alabama 36609	419092	$12,320.00
15	12/13/84	Campbell Construction Engineers, Inc. Route 10, 1525 Azalea Road Mobile, Alabama 36609	429192	$14,460.00
16	2/14/85	Campbell Construction Engineers, Inc. Route 10, 1525 Azalea Road Mobile, Alabama 36609	437677	$ 9,800.00
17	4/15/85	Campbell Construction Engineers, Inc. Route 10, 1525 Azalea Road Mobile, Alabama 36609	446767	$10,010.00
18	8/26/85	Campbell Construction Engineers, Inc. Route 10, 1525 Azalea Road Mobile, Alabama 36609	457154	$73,162.37
19	8/26/85	Campbell Construction Engineers, Inc. 1525 Azalea Road Mobile, Alabama 36609	465989	$12,460.00
20	2/13/86	Campbell Construction Engineers, Inc. Route 10, 1525 Azalea Road Mobile, Alabama 36609	025927	$11,900.00
21	3/20/86	Campbell Construction Engineers, Inc. Route 10, 1525 Azalea Road Mobile, Alabama 36609	031425	$69,512.37

All in violation of Title 18, United States Code, Section 1341 and Section 2.

COUNT TWENTY-TWO

1. At all times relevant herein the Mobile Water Service System (MWSS) was a public corporation which provided water and sewer services to the citizens of the City of Mobile. The MWSS was governed by the board of Water and Sewer Commissioners whose members were appointed by elected city officials. The daily affairs of the MWSS were handled, on the operations side, by the superintendent and his staff, and on the financial side, by the secretary-treasurer and his staff.

2. At all times relevant herein FRANCIS A. WILKIE, JR. was an employee of the MWSS. From January 19, 1980 until his retirement on June 1, 1987, FRANCIS A. WILKIE, JR. was the Water and Sewer Administrator of the MWSS and worked directly under the superintendent. As Administrator of the MWSS, FRANCIS A. WILKIE was responsible for supervising the MWSS equipment rental contract, including advising the secretary-treasurer on equipment rental needs of the MWSS and approving both the daily work reports showing equipment rental and labor usage and the equipment rental billings.

3. At all times relevant herein ELLIS L. MCDONALD was owner and president of Campbell Piping Contractors, Inc. (Campbell Piping) and its subsidiary, Campbell Construction Engineers, Inc. (CCEI). Both Campbell Piping and CCEI did business with the MWSS. From approximately 1974 until approximately March 31, 1987 CCEI was the only company which bid and contracted to rent heavy equipment and operators to MWSS.

4. At all times relevant herein, F. LEE JACKSON, JR. was employed by CCEI as Superintendent and was in charge of all work performed by CCEI at the MWSS.

5. From on or about 1974 continuing through on or about March 31, 1987, in the Southern District of Ala-

bama, ELLIS L. MCDONALD, F. LEE JACKSON, JR. and FRANCIS A. WILKIE, JR. the defendants herein, did unlawfully, wilfully and knowingly conspire with each other and with other individuals, both known and unknown to the Grand Jury, to commit the following offense against the United States:

> A) To knowingly and wilfully devise and intend to devise a scheme and artifice to defraud and for obtaining money from the MWSS by means of false and fraudulent pretenses and representations, and in furtherance of that scheme and to effect the objects thereof, to cause the use of the United States mail; in violation of Title 18, United States Code, Section 1341.

6. It was a part of the conspiracy and of the scheme to defraud and for obtaining money from the MWSS that CCEI would be the only bidder on and thus be awarded, the equipment rental contract with the MWSS, thereby depriving the MWSS of the monetary advantage of competitive bidding and making possible the further defrauding of the MWSS through false and inflated billings and billings on "make-work" projects by CCEI under the equipment rental contract.

It was further a part of the conspiracy and the scheme to defraud that the invitation for bids on equipment rental by the MWSS were worded in such a way as to virtually assure that CCEI would be the only bidder and would be awarded the contract. Under the equipment contract, CCEI would bill the MWSS and be paid for items and amounts that were either not authorized by the contract or that were false.

It was further a part of the conspiracy and scheme to defraud that F. LEE JACKSON, JR. regularly paid money to FRANCIS A. WILKIE, JR. to assure that WILKIE would keep CCEI steadily employed at the MWSS under the equipment rental contract and would approve the billings submitted by CCEI.

Overt Acts

In furtherance of the conspiracy and to effect the objects thereof, the defendants did perform, among others, the following overt acts:

1. On July 14, 1977 F. LEE JACKSON, JR. signed a letter on behalf of CCEI quoting equipment rental rates to the MWSS.

2. In June, 1980, FRANCIS A. WILKIE, JR. provided W. D. Bolton, Secretary-Treasurer of the MWSS, with an updated list of equipment to list in the 1990 invitation for bids for the MWSS equipment rental contract.

3. On July 15, 1980 F. LEE JACKSON, JR. signed a letter on behalf of CCEI quoting equipment rental rates to the MWSS.

4. In July 1983, FRANCIS A. WILKIE, JR. updated the list of equipment to accompany the invitation for bids for the MWSS equipment rental contract returnable August 4, 1983.

5. On August 2, 1983 ELLIS L. MCDONALD signed a letter on behalf of CCEI quoting equipment rental rates to the MWSS.

6. On September 16, 1983 ELLIS L. MCDONALD signed a letter on behalf of CCEI correcting and adding to his previous quote on equipment rental.

7. On June 25, 1985 ELLIS L. MCDONALD signed a letter on behalf of CCEI quoting equipment rental rates to the MWSS.

8. On July 11, 1986 ELLIS L. MCDONALD signed a letter to MWSS on behalf of CCEI accepting an extension of the equipment rental contract.

9. Beginning in the early 1980's and continuing until FRANCIS A. WILKIE, JR.'s retirement from the MWSS,

F. LEE JACKSON, JR. paid WILKIE from $100 to $300 per week.

10. From 1980 until his retirement, FRANCIS A. WILKIE, JR. approved the billings submitted to the MWSS by the CCEI under the equipment rental contract.

11. On July 10, 1985 the defendants did cause the use of the mails alleged in paragraph 3 of Count Twenty-Three.

12. On July 23, 1985 the defendants did cause the use of the mails alleged in paragraph 3 of Count Twenty-Four.

13. On July 9, 1986 the defendants did cause the use of the mails alleged in paragraph 3 of Count Twenty-Five.

14. On July 11, 1986, the defendants did cause the use of the mails alleged in paragraph 3 of Count Twenty-Six.

All in violation of Title 18, United States Code, Section 371.

COUNT TWENTY-THREE

1. The Grand Jury realleges all allegations of Paragraphs 1 through 4 of Count Twenty-Two and further alleges as follows:

2. From on or about 1974 continuing through on or about March 31, 1987, in the Southern District of Alabama, Southern Division, ELLIS L. MCDONALD, F. LEE JACKSON, JR., and FRANCIS A. WILKIE, JR., the defendants herein, willfully and knowingly devised and intended to devise a scheme and artifice to defraud and for obtaining money and property from the MWSS by means of the following false and fraudulent pretenses and representations, well and knowing at the time that the pretenses and representations were false, that is, the defendants devised a scheme whereby CCEI would be the

only bidder on and thus be awarded, the equipment rental contract with the MWSS, thereby depriving the MWSS of the monetary advantage of competitive bidding and making possible the further defrauding of the MWSS through false, inflated or unauthorized billings and billings on "make-work" projects by CCEI under the equipment rental contract.

It was a part of the scheme to defraud and for obtaining money and property that the invitation for bids on equipment rental by the MWSS were worded in such a way as to virtually assure that CCEI would be the only bidder and would be awarded the contract. Under the equipment rental contract, CCEI would bill the MWSS and be paid for items and amounts that were either not authorized by the contract or that were false.

It was further a part of the scheme to defraud and for obtaining money and property that F. LEE JACKSON, JR. regularly paid money to FRANCIS A. WILKE, JR. to assure that WILKIE would keep CCEI steadily employed at the MWSS under the equipment rental contract and would approve the billings submitted by CCEI.

3. On or about the 10th day of July, 1985, in Mobile County, in the Southern District of Alabama and within the jurisdiction of this Court, the defendants, for the purpose of executing the aforesaid scheme and artifice to defraud, did cause to be delivered through the United States mail an envelope addressed to The Mobile Press Register, P.O. Box 2488, Mobile, Alabama 36601 containing a letter; in violation of Title 18, United States Code, Section 1341 and Section 2.

COUNT TWENTY-FOUR

The Grand Jury re-alleges all allegations contained in paragraphs 1 and 2 of County Twenty-Three and further alleges as follows:

3. On or about the 23rd day of July, 1985, in Mobile County, in the Southern District of Alabama and within the jurisdiction of this Court, the Defendants, for the purpose of executing the aforesaid scheme and artifice to defraud, did cause to be delivered through the United States mail an envelope addressed to Campbell Construction Engineers, Inc., Rt. 10, 1525 Azalea Road, Mobile, Alabama 36609 containing a letter; in violation of Title 18, United States Code, Section 1341 and Section 2.

COUNT TWENTY-FIVE

The Grand Jury re-alleges all allegations contained in paragraphs 1 and 2 of Count Twenty-Three and further alleges as follows:

3. On or about the 9th day of July, 1986, in Mobile County, in the Southern District of Alabama and within the jurisdiction of this Court, the Defendants, for the purpose of executing the aforesaid scheme and artifice to defraud, did cause to be delivered through the United States mail an envelope addressed to Campbell Construction Engineers, Inc., Rt. 10, 1525 Azalea Road, Mobile, Alabama 36609 containing a letter; in violation of Title 18, United States Code, Section 1341 and Section 2.

COUNT TWENTY-SIX

The Grand Jury re-alleges all allegations contained in paragraphs 1 and 2 of Count Twenty-Three and further alleges as follows:

3. On or about the 11th day of July, 1986, in Mobile County, in the Southern District of Alabama and within the jurisdiction of this Court, the Defendants, for the purpose of executing the aforesaid scheme and artifice to defraud, did cause to be delivered through the United States mail an envelope addressed to Mr. W. D. Bolton, The Board of Water and Sewer Commissioners of the City of Mobile, Post Office Box 2368, Mobile, Alabama 36652 containing a letter; in violation of Title 18, United States Code, Section 1341 and Section 2.

COUNT TWENTY-SEVEN

On or about the 11th day of July, 1988, in the Southern District of Alabama, Southern Division, ELLIS L. MCDONALD did corruptly influence, obstruct, impede and endeavor to influence, obstruct and impede the due administartion of Justice in the United States District Court for the Southern District of Alabama by advising, suggesting and instructing Bill Cullum, a defendant and potential witness in the trial of the criminal tax case then pending, *United States v. William E. Cullum and F. Lee Jackson, Jr.*, S.D. AL. Cr. No. 88-00095-AH, and which was set for jury selection on September 12, 1988, to provide false testimony and evidence concerning the disposition of cash monies generated from Midtown Trucking and by promising to help pay any tax liability which Cullum might incur as a result of the criminal case if Cullum would provide said false testimony and evidence; in violaiton of Title 18, United States Code, Section 1503 and Section 2.

COUNT TWENTY-EIGHT

1. Commencing at a time prior to 1984, but at least by 1984 the exact date being unknown to the Grand Jury, continuing thereafter to and including November 3, 1988, in the Southern District of Alabama ELLIS L. MCDONALD the defendant herein, did unlawfully, willfully and knowingly combine, conspire, confederate and agree, with other individuals both known and unknown to the Grand Jury to defraud the United States by impeding, impairing, obstructing and defeating the lawful Government functions of the Internal Revenue Service of the Treasury Department in the ascertainment, computation, assessment and collection of the revenue, to wit, income taxes.

Parties, Persons and Entities

At all relevant times,

2. The defendant ELLIS L. MCDONALD was owner and president of Campbell Piping Contractors, Inc. and its wholly-owned subsidiary, Campbell Construction Engineers, Inc. (CCEI).

3. Marvin H. Weaver was general superintendent for Campbell Construction Engineers, Inc. (CCEI) and as such, was responsible for overseeking and daily operations of CCEI.

4. Midtown Trucking Company was owned by William E. Cullum, and was operated by Cullum and F. Lee Jackson, Jr., superintendent at CCEI. Midtown Trucking Company billed CCEI for the rental of vehicles and equipment.

5. Bay Equipment Company was owned and operated by James H. Jackson and billed CCEI for subcontracted jobs.

6. Tri-City Tire Company and Singing River Tire Company were operated by Rudy Harrelson. Harrelson billed CCEI for tires and parts in the name of Tri-City and Singing River Tire Companies. Harrelson also submtted invoices to CCEI using the name "DIRT."

Manner and Means By Which
The Conspiracy Was Carried Out

The manner and means by which the conspiracy was sought to be accomplished included, among others, the following:

7. ELLIS L. MCDONALD devised and participated in a scheme to launder cash out of CCEI for his personal use and benefit through the generation of fraudulent invoices. The scheme involved the conspirators arranging to have fraudulent invoices issued to CCEI which the defendant then approved for payment. CCEI checks were

issued in payment of the fraudulent invoices and the checks were either laundered through several entities before being cashed, or were cashed immediately, with the cash being returned to ELLIS L. MCDONALD or another conspirator. The CCEI checks issued in payment of the fraudulent invoices were then disguised as business deductions on the consolidated income tax returns of CCEI and it's parent company.

Overt Acts

In furtherance of the conspiracy and to effect the objects thereof, the following overt acts were committed in the Southern District of Alabama.

1. From June 1984 through January 1986, ELLIS L. MCDONALD caused numerous fraudulent invoices from Midtown Trucking Company, Inc. (Midtown) and Bay Equipment Company, Inc. (Bay) for equipment rental at the MWSS canal to be submitted for payment to CCEI. ELLIS L. MCDONALD and Marvin H. Weaver approved the invoices for payment resulting in CCEI checks being issued to Midtown and Bay for a total of $329,405.75 with that amount fraudulently being deducted on Campbell Piping Contractors, Inc. and Subsidiaries (CPCIS) consolidated corporate tax returns. From the proceeds of those fraudulent invoices, McDonald received regular weekly cash payments totalling approximately $221,500.00.

2. From March 21, 1985 through December 13, 1985 ELLIS L. MCDONALD caused several fraudulent miscellaneous Midtown invoices to be submitted to CCEI which MCDONALD and Marvin H. Weaver approved for payment. The CCEI checks totalling $28,782.00 issued to Midtown in payment of these invoices were fraudulently deducted on CPCIS' consolidated corporate tax returns. From the proceeds of those fraudulent invoices, MCDONALD received approximately $28,760.00 in cash.

3. In 1986 ELLIS L. MCDONALD caused four fraudulent Bay invoices for sludge/waste disposal to be submitted to CCEI. MCDONALD and Marvin H. Weaver approved the invoices for payment resulting in CCEI checks being issued to Bay for $56,214.44 which sum was then fraudulently deducted on CPCIS' consolidated corporate tax return. From the proceeds of those fraudulent invoices MCDONALD received approximately $56,000.00.

4. From March 14, 1986 through February 26, 1987 ELLIS L. MCDONALD caused 50 fraudulent Bay invoices to be billed on a weekly basis to CCEI for the rental of a dozer which CCEI/Campbell Piping already owned. MCDONALD and Marvin H. Weaver approved the invoices for payment resutling in fraudulent deductions of $66,362.83 on CPCIS' consolidated corporate tax return. From the proceeds of the fraudulent invoiced dozer, MCDONALD received $1,000.00 per week in cash.

5. From October 5, 1984 through December 30, 1986 Marvin H. Weaver caused 108 fraudulent Bay invoices to be submitted for payment to CCEI. These Bay invoices billed CCEI for the rental of a dump truck at $720.00 per week from which $300.00 to $400.00 per week in cash was kicked back to Weaver. Weaver approved the invoices for payment resulting in the cash kickback amounts being fraudulently deducted on CPCIS consolidated corporate tax returns.

6. From October 16, 1986 through February 24, 1987 Marvin H. Weaver caused six fraudulent Bay invoices to be submitted for payment to CCEI from which $8,000.00 was kicked back to Weaver in cash. Weaver approved the invoices for payment with the $8,000.00 included as fraudulent work-in-process job costs on the Halls Mill Road job.

7. In December, 1985, Marvin H. Weaver caused fictitious Tri-City Tire Company and Singing River Tire

Company invoices to be submitted for payment to CCEI. Both Weaver and ELLIS L. MCDONALD approved the invoices for payment resulting in CCEI checks being issued to the two companies for $21,784.66 which sum was then fraudulently deducted on CPCIS' consolidated tax return. From the proceeds of the fraudulent invoices, MCDONALD received $20,695.43 in cash.

8. From January 24, 1986 through April 22, 1988, Marvin H. Weaver caused fictitious "DIRT" invoices to be submitted to CCEI for payment. Both Weaver and ELLIS L. MCDONALD approved the fraudulent invoices for payment resulting in checks issued to DIRT/R. Harrelson totalling $197,136.40. Weaver caused that sum to be included in costs on three different Mississippi jobs of which $85,639.27 was fraudulently deducted in cost of goods sold on CPCIS' consolidated corporate tax return. The remaining $111,497.13 was included as fraudulent work-in-process costs on the other two Mississippi jobs. Weaver caused all of the checks issued to DIRT/R. Harrelson to be converted to cash, from which MCDONALD received $187,279.60 from 1986 through April, 1988.

9. In May, 1985, ELLIS L. MCDONALD caused a false invoice for accounting services to be submitted for payment to CCEI. MCDONALD and Marvin H. Weaver approved the invoice for payment resulting in a CCEI check being issued to Bill Cullum for $5,000.00 which was later fraudulently deducted as a payment for professional services on CPCIS' consolidated corporate tax return. From the proceeds of the false invoice, MCDONALD received $5,000.00

10. On July 11, 1988 ELLIS L. MCDONALD met with F. Lee Jackson, Jr. and Bill Cullum in front of MCDONALD's residence and discussed presenting a false defense in the upcoming criminal tax trial of Jackson and Cullum. During this conversation McDonald agreed to falsely testify that the Midtown invoices to CCEI were legitimate.

11. On November 3, 1988 ELLIS L. MCDONALD caused a fraudulent Bay invoice to be submitted for payment to CCEI for rental of a bulldozer which was not actually being used by CCEI. From the proceeds of this invoice MCDONALD received $1,000.00.

All in violation of Title 18, United States Code, Sec-371.

COUNT TWENTY-NINE

On or about the 9th day of September, 1985, in the Southern District of Alabama, the Defendant ELLIS L. MCDONALD, a resident of Mobile, Alabama, did willfully aid and assist in, and procure, counsel, and advise the preparation and presentation to the Internal Revenue Service, of a Consolidated U. S. Corporation Income Tax Return, Form 1120, of Campbell Piping Contractors, Inc. & Subsidiaries for the fiscal year ending February 28, 1985, which was false and fraudulent as to a material matter in that it represented that the said corporation and its subsidiaries were entitled under the provisions of the Internal Revenue laws to claim deductions in the total sum of $21,620,383.00, whereas, the defendant then and there well knew and believed, approximately $126,835.67 of those deductions were false and fraudulent in that they were not legitimate business expenses of Campbell Piping Contractors, Inc. & Subsidiaries. In violation of Title 26, United States Code, Setcion 7206 (2).

COUNT THIRTY

On or about the 10th day of October, 1986, in the Southern District of Alabama, ELLIS L. MCDONALD, who was the president and owner of Campbell Piping Contractors, Inc. & Subsidiary, did willfully attempt to evade and defeat a large part of the income tax due and owing by the said corporation and its subsidiary to the United States of America for the fiscal year ending February 28, 1986, by causing to be prepared, signed and mailed a false and fraudulent U. S. Corporation Income

Tax Return, Form 1120, which was filed with the Internal Revenue Service on behalf of said corporation and its subsidiary, wherein it was that the taxable income of said corporation and its subsidiary for the said fiscal year was the sum of $1,961,510.00 and that the total amount of tax due and owing there on was the sum of $867,294.00, whereas, as he then and there well knew and believed, the taxable income of Campbell Piping Contractors, Inc. & Subsidiary for the fiscal year ending February 28, 1986 was the sum of approximately $2,224,379.74 upon which taxable income there was due and owing to the United States of America a total tax of approximately $921,151.68.

In violation of Title 26, United States Code, Section 7201.

COUNT THIRTY-ONE

On or about the 24th day of June, 1987, in the Southern District of Alabama, the defendant ELLIS L. MCDONALD, a resident of Mobile, Alabama, did wilfully aid and assist in, and procure, counsel, and advice the preparation and presentation to the Internal Revenue Service, of a Consolidated U. S. Corporation Income Tax Return, Form 1120, of Campbell Piping Contractors, Inc. & Subsidiary for the fiscal year ending February 28, 1987, which was false and fraudulent as to a material matter in that it represented that the said corporation and its subsidiary were entitled under the provisions of the Internal Revenue laws to claim deductions in the total sum of $20,395,240.00, whereas, the defendant then and there well knew and believed, approximately $226,583.54 of those deductions were false and fraudulent in that they were not legitimate business expenses of Campbell Piping Contratcors, Inc. & Subsidiary. In violation of Title 26, United States Code, Section 7206(2).

COUNT THIRTY-TWO

That on or about the 12th day of August, 1985, in the Southern District of Alabama, ELLIS L. MC-

DONALD, a resident of Mobile, Alabama, who during the calendar year 1984 was married, did willfully attempt to evade and defeat a large part of the income tax due and owing by him and his spouse to the United States of America for the calendar year 1984, by preparing and causing to be prepared, and by signing and causing to be signed, a false and fraudulent joint U. S. Individual Income Tax Return, Form 1040, on behalf of himself and his spouse, which was filed with the Internal Revenue Service, wherein it was stated that their joint taxable income for said calendar year was the sum of $555,154.00, and that the amount of tax due and owing thereon was the sum of $254,563.00, whereas, as he then and there well knew and believed, their joint taxable income for the said calendar year was the sum of approximately $602,654.00, upon which said joint taxable income there was owing to the United States of America tax of approximately $278,313.00.

In violation of Title 26, United States Code, Section 7201.

COUNT THIRTY-THREE

That on or about the 14th day of October, 1986, in the Southern District of Alabama, ELLIS L. MCDONALD, a resident of Mobile, Alabama, who during the calendar year 1985 was married, did willfully attempt to evade and defeat a large part of the income tax due and owing by him and his spouse to the United States of America for the calendar year 1985, by preparing and causing to be prepared, and by signing and causing to be signed, a false and fraudulent joint U. S. Individual Income Tax Return, Form 1040, on behalf of himself and his spouse, which was filed with the Internal Revenue Service, wherein it was stated after later Service Center adjustments that their joint taxable income for said calendar year was the sum of $515,242.00, and that the amount of tax due and owing thereon was the sum of $237,252.00, whereas, as he then and there well knew and believed, their joint taxable income for the said cal-

endar year was the sum of approximately $699,697.43, upon which said joint taxable income there was owing to the United States of America tax of approximately $329,479.41.

In violation of Title 26, United States Code, Section 7201.

COUNT THIRTY-FOUR

That on or about the 6th day of October, 1987, in the Southern District of Alabama, ELLIS L. MCDONALD, a resident of Mobile, Alabama, who during the calendar year 1986 was married, did willfully attempt to evade and defeat a large part of the income tax due and owing by him and his spouse to the United States of America for the calendar year 1986, by preparing and causing to be prepared, and by signing and causing to be signed, a false and fraudulent joint U. S. Individual Income Tax Return, Form 1040, on behalf of himself and his spouse, which was filed with the Internal Revenue Service, wherein it was stated that their joint taxable income for said calendar year was the sum $624,969.00, and that the amount of tax due and owing thereon was the sum of $292,379.00, whereas, as he then and there well knew and believed, their joint taxable income for the said calendar year was the sum of approximately $891,435.82, upon which said joint taxable income there was owing to the United States of America tax of approximately $425,612.91.

In violation of Title 26, United States Code, Section 7201.

COUNT THIRTY-FIVE

That on or about the 5th day of August, 1988, in the Southern District of Alabama, ELLIS L MCDONALD, a resident of Mobile, Alabama, who during the calendar year 1987 was married, did willfully attempt to evade and defeat a large part of the income tax due and owing by him and his spouse to the United States of America for the calendar year 1987, by preparing and causing to

be prepared, and by signing and causing to be signed, a false and fraudulent joint U. S. Individual Income Tax Return, Form 1040, on behalf of himself and his spouse, which was filed with the Internal Revenue Service, wherein it was stated that their joint taxable income for said calendar year was the sum of $616,392.00 and that the amount of tax due and owing thereon was the sum of $227,949.00, whereas, as he then and there well knew and believed, their joint taxable income for the said calendar year was the sum of approximately $737,363.10, upon which said joint taxable income there was owing to the United States of America tax of approximately $274,522.79.

In violation of Title 26, United States Code, Section 7201.

FORFEITURE

1. Count One of this indictment is hereby incorporated herein by reference for the purpose of alleging forfeitures pursuant to Title 18, United States Code, Section 1963.

2. Through the aforesaid pattern of racketeering activity, the defendant, ELLIS L. MCDONALD, has acquired and maintained interests in, and has property constituting, or derived from, proceeds obtained, directly or indirectly, from racketeering activity in violation of Title 18, United States Code, Section 1962, which interests are subject to forfeiture to the United States pursuant to Title 18, United States Code, Section 1963(a)(1) and (3). The United States' intent to forfeit real and personal property includes, but is not limited to, the defendant's interest in the following assets or the proceeds thereof:

a. The following real property and the proceeds thereof:

(1) Campbell Industrial Park deeded to Campbell Piping Contractors, Inc., on September 17, 1968, the said deed recorded in Real Property

Book 854, page 258 of the Public Records of Mobile County, Alabama, described as follows:

> From an old lighter stake at the center of Section 12, Township 5 South, Range 2 West, Mobile County, Alabama, run westwardly 43 feet, thence north .06 feet, to an iron stake at a fence corner for the point of beginning of the property herein described; thence; south 88 degrees, 54 minutes, 30 seconds west along the fence line 674.86 feet, to the northeasterly line of Wragg Swamp Canal; thence 59 degrees 41 minutes 30 seconds west along the northeasterly line of said canal 747.63 feet to the southeasterly line of Halls Mill Road; thence northeastwardly curving to the right along the southeasterly line of Halls Mill Road and along the arc of a 5,794 foot radius curve 550.70 feet to the P.T. of said curve (cord bears north 43 degrees 40 minutes 38 seconds east, 550.47 feet) thence 46 degrees 24 minutes east 201.46 feet to a point; thence south 40 degrees 07 minutes east 272.76 feet to a point; thence north 46 degrees 22 minutes east 720.3 feet to an iron stake in an old fence line; thence south 40 degrees 01 minutes 47 seconds east along the fence line 157.51 feet to an old iron stake; thence south 00 degrees 13 minutes 40 seconds west 1,069.33 feet to the point of beginning.

b. The following sums of money:

1) The sum of approximately $4,401.25 received by Campbell Construction Engineers, Inc. from the Mobile Water Service System based on CCEI invoice #2922 dated February 14, 1977;

2) The sum of approximately $201,871.00 received by CCEI from the MWSS based on CCEI invoices submitted to the MWSS on the canal cleaning project after July 29, 1983;

3) The sum of approximately $1,202.00 received by CCEI from the MWSS on CCEI invoices submitted to the MWSS for work allegedly performed while F. L. Jackson was hospitalized;

4) The sum of approximately $75,000.00 received from CCEI from the MWSS for fraudulent employee billing;

5) The sum of approximately $483,000.00 received by CCEI from the MWSS from unauthorized additions of unidentified surcharges and a percentage of payroll taxes to the labor charges submitted to the MWSS by CCEI for a period from 1980-1986.

6) The sum of approximately $98,000.00 received by CCEI from the MWSS for the over billing for operator and pickup truck rental from 1980 through 1986.

c. All assets of Campbell Construction Engineers, Incorporated (CCEI) and proceeds thereof, including but not limited to all real and personal property, equipment, vehicles, bank accounts, bonds, accounts receivable, pensions, retirement plans, Keogh plans, profit sharing plans, state or federal income tax refunds and insurance proceeds.

3. The defendant, ELLIS L. MCDONALD, further has an interest in, security of, claim against, and contractual rights in Campbell Piping, Inc. which afforded a source of influence over the enterprise named herein, which the defendant established, operated, controlled, conducted and participated in the conduct of, in violation of Title 18, United States Code, Section 1962, and which interests in Campbell Piping, Inc. are subject to forfeiture to the United States pursuant to Title 18, United States Code, Section 1963(a)(2). The United States' intent

to forfeit includes, but is not limited to, the defendant's interest in the folowing:

a. All shares of stock in Campbell Construction Engineers, Incorporated, Mobile, Alabama.

b. The assets or proceeds of said Campbell Construction Engineers, Incorporated, as set forth in paragraph 2c of the Forfeiture Allegations, incorporated herein by reference.

c. The following real property and the proceeds thereof:

(1) Campbell Industrial Park deeded to Campbell Piping Contractors, Inc., on September 17, 1968, the said deed recorded in Real Property Book 854, page 258 of the Public Records of Mobile County, Alabama, described as follows:

> From an old lighter stake at the center of Section 12, Township 5 South, Range 2 West, Mobile County, Alabama, run westwardly 43 feet, thence north .06 feet, to an iron stake at a fence corner for the point of beginning of the property herein described; thence south 88 degrees, 54 minutes, 30 seconds west along the fence line 674.86 feet, to the northeasterly line of Wragg Swamp Canal; thence 59 degrees 41 minutes 30 seconds west along the northeasterly line of said canal 747.63 feet to the southeasterly line of Halls Mill Road; thence northeastwardly curving to the right along the southeasterly line of Halls Mill Road and along the arc of a 5,794 foot radius curve 550.70 feet to the P.T. of said curve (cord bears north 43 degrees 40 minutes 38 seconds east, 550.47 feet) thence 46 degrees 24 min-

utes east 201.46 feet to a point; thence south 40 degrees 07 minutes east 272.76 feet to a point; thence north 46 degrees 22 minutes east 720.3 feet to an iron stake in an old fence line; thence south 40 degrees 01 minutes 47 seconds east along the fence line 157.51 feet to an old iron stake; thence south 00 degrees 13 minutes 40 seconds west 1,069.33 feet to the point of beginning.

4. Through the aforesaid pattern of racketeering activity Defendant, MICHAEL A. TAYLOR has acquired and maintained interest in and has property constituting and derived from, proceeds obtained directly or indirectly from racketeering activity in violation of Title 18, United States Code, Section 1962, which interests are subject to forfeiture to the United States pursuant to Title 18, United States Code, Section 1963(a)(1) and (3). The United States' intent to forfeit includes, but is not limited to, MICHAEL A. TAYLOR'S interest in the following:

1. The approximate amount of $15,000.00 paid to MICHAEL A. TAYLOR by F. LEE JACKSON, JR during 1983 through 1986.

All in violation of Title 18, United States Code, Section 1962(c) and 1963(a).

A TRUE BILL

Foreman United States Grand Jury
Southern District of Alabama

June 1989

J.B. SESSIONS, III
United States Attorney